IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2707 OF 2006
IN
FIRST APPEAL NO.272 OF 2006

Izaz Ahmed Abdul Hussein ...Applicant

Versus

Akbarali Suleman Khan (Deceased
through his heirs)
Smt.Shaharunnisa Akbarali Khan & Ors. ... Respondents

Shri G.S.Godbole i/by M/s R.J.Singh & Company for the Applicant (the Respondent No.3 in the Appeal).
Shri A.G.Damle i/by M/s Ashoka Law Firm for the Respondent No.4 (the Appellant in the Appeal).
Shri M.A.Haindaday with Shri A.S.H.Khan for the Respondent Nos.1B to 1G.

CORAM : ABHAY S.OKA, J.
DATE : JANUARY 31, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The Applicant is the defendant No.3. During the pendency of the suit, the Applicant was the only person who was brought on record as the legal representative of the deceased-defendant No.2. The original defendant No.1 has deposited a sum of Rs.2,000/- per month in compliance with interim order dated 06th March, 1991 passed during the pendency of the suit. The said interim order permitted the Defendant No.2 to withdraw the said amount. The defendant No.2 during her lifetime has withdrawn a sum of Rs.47,500/-. As of today, a sum of Rs.2,45,580/- is pending in the trial Court.

2. The learned counsel appearing for the original plaintiff (Appellant) contended that the Plaintiff is also one of the legal representative of the defendant No.2 and is therefore entitled to a share in the said amount. Same is the contention raised by the learned counsel appearing for the Respondent Nos.1B to 1G.

3. During the pendency of the suit, the present Applicant was the only person who was brought on record as the legal representative of the deceased-defendant No.2. Therefore, the Applicant herein will have to be permitted to withdraw the sum of Rs.2,45,580/- subject to the final outcome of the Appeal and subject to giving an undertaking to the trial Court to bring back the amount with the appropriate rate of interest in case an order for refund is made by this Court at the time of final disposal of the Appeal. So far as prayer clause (a) is concerned, I have dealt with the said aspect while passing order on application for interim relief filed by the Appellant. The application is disposed of by permitting the Applicant to withdraw a sum of rs.2,45,580/- subject to giving an undertaking to redeposit the amount with the appropriate rate of interest in case this court directs him to do so at the time of final hearing of the Appeal. The undertaking to

be filed in the trial Court.

JUDGE